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**Attorneys for Plaintiff
J & J Sports Productions, Inc.**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

J & J SPORTS PRODUCTIONS, INC.

Case No. 3:08-cv-00473-WHA

Plaintiff,

**NOTICE OF APPLICATION AND
APPLICATION FOR DEFAULT
JUDGMENT BY THE COURT**

CESAR MEJIA AGUILAR, et al.,

For: Honorable William H. Alsup

Defendant

Date: May 22, 2008

Time: 8:00 AM

**TO THE HONORABLE WILLIAM H. ALSUP, THE DEFENDANT AND
HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT on a date and at a time to be set by this Honorable Court or as soon thereafter as this matter may be heard by the above entitled United States District Court, located at 450 Golden Gate Ave., San Francisco, CA 94102, Plaintiff will present its Application for Default Judgment against Defendant Cesar Mejia Aguilar, individually and d/b/a Club 26 Mix.

The Clerk has previously entered the default of said Defendant on or about April 9, 2008.

At the time and place of hearing, Plaintiff will present proof of the following matters:

**NOTICE OF APPLICATION AND APPLICATION
FOR DEFAULT JUDGMENT BY THE COURT
CASE NO. 3:08-CV-00473-WHA
PAGE 1**

- 1 1. Defendant is not an infant or incompetent person, or in military service or otherwise
2 exempted under the Soldiers' and Sailors' Civil Relief Act of 1940; and,
- 3 2. Defendant has not appeared in this action; and,
- 4 3. Notice of this Application for Default Judgment by the Court and supplemental
5 pleadings were served on said Defendant; and,
- 6 4. Plaintiff is entitled to judgment against Defendant the claims pled in the complaint.

7 To wit:

- 8 A. By contract, Plaintiff paid for the proprietary rights to distribute the "*The*
9 *Battle;*" *Erik Morales v. Manny Pacquiao II WBC International Super*
10 *Featherweight Championship Fight Program* of January 21, 2006, via closed-circuit
11 television (hereinafter referred to as the "Program").
- 12 B. With full knowledge that the Program was not to be intercepted, received,
13 and/or exhibited by entities unauthorized to do so, the above named Defendant,
14 and/or his agents, servants, workmen, and/or employees, did unlawfully intercept,
15 receive and thereafter exhibit the Program at the time of the transmission at the
16 address of the establishment, "Club 26 Mix", a food and drink operated by
17 Defendant, and located at 3024 Mission St., San Francisco, California 94110. Please
18 see the concurrently filed Declaration of Affiant.
- 19 C. Said unauthorized reception, interception and/or exhibition of the Program
20 by said Defendant was done willfully and for the purpose of direct or indirect
21 commercial advantage or private financial gain.
- 22 D. The unauthorized publication or use of communications, such as the
23 transmission for which Plaintiff had the distribution rights, is prohibited by Title 47
24 U.S.C., Section 605, *et seq.*

E. The unauthorized reception, interception and exhibition of the Program at the address of the defendant's establishment as described herein, is also prohibited by Title 47 U.S.C. sec. 553, *et seq.*

F. By said acts of receiving, intercepting and exhibiting the Program at the above-indicated address, Defendant tortuously obtained possession of the Program and wrongfully converted same to his own use and benefit.

5. Plaintiff seeks Judgment in its favor and against the Defendant, in the amount of \$101,600.00. A breakdown of the relief requested under each of the three (3) counts of the Plaintiff's complaint is detailed within the Proposed Order concurrently filed.

6. By and through this Application, Plaintiff also seeks recovery of its attorneys' fees and relevant costs incurred as provided for pursuant to 47 U.S.C. Section 553, *et seq.* and 47 U.S.C. Section 605, *et seq.*

Respectfully submitted,

Dated: April 24, 2008

/s/ Thomas P. Riley
LAW OFFICES OF THOMAS P. RILEY, P.C.
BY: Thomas P. Riley
Attorneys for Plaintiff
J & J Sports Productions, Inc.

**NOTICE OF APPLICATION AND APPLICATION
FOR DEFAULT JUDGMENT BY THE COURT
CASE NO. 3:08-CV-00473-WHA
PAGE 3**

1 **PROOF OF SERVICE (SERVICE BY MAIL)**

2
3 I declare that:

4
5 I am employed in the County of Los Angeles, California. I am over the age of eighteen years
6 and not a party to the within cause; my business address is First Library Square, 1114 Fremont Street,
7 South Pasadena, California 91030-3227. I am readily familiar with this law firm's practice for
8 collection and processing of correspondence/documents for mail in the ordinary course of business.

9
10 On April 24, 2008, I served:

11 **NOTICE OF APPLICATION AND APPLICATION FOR DEFAULT JUDGMENT
12 BY THE COURT**

13 On all parties referenced by enclosing a true copy thereof in a sealed envelope with postage prepaid
14 and following ordinary business practices, said envelope was duly mailed and addressed to:

16 Cesar Mejia Aguilar (Defendant)
17 3024 Mission Street
18 San Francisco, CA 94110

19 I declare under the penalty of perjury pursuant to the laws of the United States that the
20 foregoing is true and correct and that this declaration was executed on April 24, 2008, South Pasadena,
21 California.

23 Dated: April 24, 2008

/s/ Terry Houston

TERRY HOUSTON

**Thomas P. Riley, SBN 194706
LAW OFFICES OF THOMAS P. RILEY, P.C.
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1114 Fremont Avenue
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**Attorneys for Plaintiff
J & J Sports Productions, Inc.**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

J & J SPORTS PRODUCTIONS, INC.

CASE NO. 3:08-cv-00473-WHA

Plaintiff,

VS.

CESAR MEJIA AGUILAR, et al.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR
DEFAULT JUDGMENT BY THE
COURT**

Defendant.

INTRODUCTION

Plaintiff, J & J Sports Productions, Inc. (hereinafter “Plaintiff”) is an international distributor of sports and entertainment programming. By contract, Plaintiff purchased the domestic commercial exhibition rights to broadcast the “*The Battle; Erik Morales v. Manny Pacquiao II, WBC International Super Featherweight Championship Fight Program* of January 21, 2006. This Program included the main event (between Erik Morales and Manny Pacquiao II) along with under-card (preliminary) bouts, televised replay, and color commentary, hereinafter collectively referred to as the “*Program*”.

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**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFF'S APPLICATION FOR
DEFAULT JUDGMENT BY THE COURT
CASE NO. 3:08-CV-00473-WHA
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Plaintiff thereafter entered into sublicensing agreements with commercial entities throughout United States and its territories, wherein it granted limited public exhibition rights to these entities (sub-licensees) for the benefit and entertainment of the patrons within their respective establishments (i.e., hotels, racetracks, casinos, taverns, bars, restaurants, social clubs, etc.).

The interstate transmission of the Plaintiff's *Program* was encrypted and made available only to Plaintiff's customers (commercial locations which paid Plaintiff the requisite closed-circuit (commercial) license fees to exhibit the *Program*).

On January 21, 2006 an investigator observed the unlawful exhibition of Plaintiff's *Program* at the Defendant's commercial establishment. The investigator's observations were later documented in a sworn affidavit now before this Honorable Court. (Please see Declaration of Affiant.)

On January 17, 2008, Plaintiff filed suit against Cesar Mejia Aguilar, individually and d/b/a CLUB 26 MIX (hereinafter “Defendant”) after Plaintiff’s efforts to resolve this matter informally failed. The thrust of Plaintiff’s Complaint alleged that the Defendant, and his employees and agents unlawfully intercepted and intentionally exhibited the *Program* at the Defendant’s establishment for the purpose of direct or indirect commercial advantage, thereby violating Section 605 of the Federal Communications Act of 1934, as amended, as well as Title 47 U.S.C. § 553. Plaintiff’s complaint also includes a pendant common-law claim of Conversion.

Neither the Defendant nor anyone acting on the Defendant's behalf filed an Answer or any other responsive pleading to Plaintiff's duly served complaint. Accordingly, on April 9, 2008 following Plaintiff's Request, the Court entered default against the Defendant in this action.

WHEREFORE, Plaintiff respectfully requests this Honorable Court now enter judgment against the Defendant as prayed forth below.

1 DISCUSSION

2 **PLAINTIFF IS ENTITLED TO ENHANCED STATUTORY DAMAGES IN THIS ACTION**

3
4 Once a default judgment is entered, “it generally is treated as a conclusive and final
5 adjudication of the issues necessary to justify the relief awarded and is given the same effect as
6 between the parties as a judgment rendered after a trial on the merits.” *Wright, Miller & Kane,*
7 *Federal Practice and Procedures*, §2684, p. 4-19-20. The Defendant’s default serves as an admission
8 of Plaintiff’s well-pled allegations of fact. *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).
9 Accordingly, the only issue remaining to be decided in this case is the amount of damages, attorneys’
10 fees, and costs to which Plaintiff is entitled from the Defendant for the unauthorized exhibition of
11 Plaintiff’s *Program*.

12 Title 47 U.S.C. Section 605 protects companies such as the Plaintiff against the theft of its
13 proprietary communications such as the instant *Program*. See, *International Cablevision, Inc. v.*
14 *Sykes*, 75 F.3d.123 (2d Circ. 1996), *Cimenelli v. Cablevision*, 583 F. Supp. 158, 161 (E.D.N.Y.
15 1984); *Cablevision Systems v. Seimon*, 767 F.2d 1364 (1985); *Quincy Cablesystems, Inc. v. Sully’s*
16 *Bar, Inc.*, 640 F. Supp. 1159 (D.Mass. 1986); *National Subscription Television v. S & HTV*, 644
17 F.2d 820 (9th Cir. 1981); *National Football League v. Alley, Inc.*, 624 F. Supp. 6 (S.D. Fla. 1983).
18 The majority of the Courts have found that Section 605 applies to cases where the end-user offender
19 obtained a proprietary broadcast by way of a satellite (rather than cable) television programming
system.

20 Title 47 U.S.C. § 553 was designed to provide a remedial scheme for unauthorized reception
21 of cable communication. *Home Box Office v. Gee-Cee, Inc.*, 838 F.Supp. 436 (E.D. Mo. 1993).
22 Certain courts have also held a private party plaintiff may recover civil damages pursuant to this
23 statute where end-users violators unlawfully obtained a proprietary broadcast via satellite.

24 As a starting point, a party aggrieved under the Statutes may, at their discretion, recover either
25 actual or statutory damages. **§§ 553(c)(3)(A) and 605(e)(3)(C)**. Statutory damages may be awarded
26 up to \$10,000.00 for each violation. **§§ 553(c)(3)(A)(ii) and 605(e)(3)(C)(i)(II)**. Additionally, if the
27 Court determines the violations were committed “willfully and for purposes of direct or indirect
28 commercial advantage or private financial gain,” **the Court may award enhanced damages of up to
\$100,000.00 for each violation under §605(e)(3)(C)(ii) and \$50,000.00 under §553(c)(3)(B)(III)**.

1 Because Plaintiff constitutes an aggrieved party under these telecommunications statutes (hereinafter
 2 “Statutes”) (see §§553 (C)(1) and 605(D)(6)), Plaintiff is entitled to damages from the Defendant.

3 CLUB 26 MIX is a commercial establishment, and could only lawfully obtain the *Program* if
 4 Plaintiff had contracted with Defendant for the rights to show the *Program*. However, this lawful
 5 approach was not taken. Therefore, Defendant must have undertaken specific wrongful actions to
 6 intercept an/or receive and broadcast the encrypted telecast. (Please see Plaintiff’s Affidavit in
 7 Support of Plaintiff’s Application for Default Judgment by the Court concurrently filed with this
 8 Memorandum (hereinafter “Plaintiff’s Affidavit”). Since the Defendant must have committed
 9 wrongful acts in order to intercept, receive, and broadcast the *Program*, Plaintiff seeks substantial
 10 statutory damages from the court in this action.

11 Statutory damages are appropriate where actual damages are difficult to prove. *Lauretex*
Textile Corp. v. Allton Knitting Mills, Inc., 519 F. Supp. 730, 732 (S.D.N.Y. 1981). The lack of
 12 adequate proof of any particular element causes the Court to rely, within its discretion, on the
 13 statutory limitations. *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 233 (1952). In
 14

15 the instant case, as more fully discussed infra, it would be impossible to calculate the full extent of
 16 the profits lost by Plaintiff and the additional damages sustained by Plaintiff as a result of the
 17 Defendant’s unlawful actions. Accordingly, it is appropriate for Plaintiff to elect to receive statutory
 18 damages in the instant action.

19 In order to deter the unlawful use of communications such as the *Program*, Congress
 20 specifically designed the Statutes to provide “both Prosecutor[s] and civil plaintiffs [with] the legal
 21 tools they need to bring piracy under control.” *Trademark & Satellite Acts, P.L.-6678, 1988 U.S.*
Cong. & Admin. News 7, 5577, 5658; See also *U.S. v. Scott*, 783 F. Supp. 280, 281 (N.D. Miss.
 22 1992). To reach these ends, the Statutes include severe penalties, both civil and criminal, for those
 23 who intercept, receive and/or broadcast protected communications. See *Scott*, 783 F. Supp. At 281;
 24 See generally §§ 553(b) and 605(e). Moreover Congress has equated a violation of the Statutes to
 25 theft of service. See **1988 U.S. Code Cong. & Admin. News** 7, 5577, 4642-43. In 1988, in an
 26 effort ///

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 28

1 to further deter theft, Congress amended the Statutes to provide for more severe penalties for
 2 violations. *Id.* at 5657.

3 As set forth within Plaintiff's Affidavit, the Defendant's interception, receipt, and broadcast
 4 of the encrypted *Program* was not inadvertent. Both §§ 553(c)(3)(C) and 605(e)(3)(C)(iii) provides
 5 for limited damages to the aggrieved party “[i]n any case where the court finds that the violator was
 6 not aware and had no reason to believe that his acts constituted a violation of this section”, as
 7 stated by Congress, this type of situation occurs rarely:

8 [i]t is not intended that this provision serve in any way as a defense to
 9 determination of liability under subsection (a), but rather only as provision
 10 to be exercised in the court's discretion for those rare instances of
 11 ignorance of the law on the part of one adjudged to have violated it.

12 **Cable Communications Policy Act**, P.L. 98-549, 5 U.S. Cong. News. '84 Bd. Vol. 8, 4745, 4751.

13 Instead, when Congress enacted the Statutes, it was specifically cognizant of the severe
 14 impact of theft of various wire communications, including closed circuit programming, such as the
 15 *Program*.

16 As stated in the House Bill:

17 “The Committee is extremely concerned with a problem which is
 18 increasingly plaguing the cable industry—the theft cable service. This
 19 problem has taken on many forms from the manufacture and sale of
 20 equipment intended to permit reception of cable services without paying for
 21 it, to apartment building dwellers “tapping” into cable system wire into
 22 building’s hallway that issued for providing service to a neighbor’s
 23 apartment unit, to the sale by building superintendents of cable converters
 24 left behind by previous tenants to new tenants. Such practices does not only
 25 often permit one to obtain cable services without paying the installation and
 26 hookup costs, but also, for instances, involve individuals gaining access to
 27 premium movie and sports channels without paying for the receipt of those
 28 services.

29 Theft of services deprives the cable industry of millions of dollars of revenue
 30 each year which it should otherwise be receiving. The Committee believes
 31 that theft of cable service poses a major threat to the economic viability of
 32 cable operators and cable programmers, and creates unfair burdens on cable
 33 subscribers who are forced to subsidize the benefits that other individuals are
 34 getting by receiving cable service without paying for it”.

35 ///

1 ***Cable Communications Policy Act of 1984, House Report No. 98-934, 5 U.S. Cong. News.*** '84 Bd.
 2 Vol. -6, 4655, 4720. Moreover, according to Congress, these incidents threaten to undermine the
 3 satellite industry and adversely impact legitimate satellite dealers and satellite programmers who
 4 otherwise should be receiving payment for their programming or descrambling devices. See ***U.S. v.***
 5 ***Scott***, 783 F.Supp. 280, 281 (N.D. Miss. 1992) (quoting 1984 U.S. Code Cong. & Admin. News
 6 4655, 4746).

7 Therefore, in light of the above observations, as it first basis for relief, Plaintiff requests
 8 statutory damages pursuant to §§ 553(c)(3)(A)(ii) and 605(e)(3)(C)(i)(II). See ***Cable/Home***
 9 ***Communication Corp. v. Network Production, Inc.***, 902 F.2d 829, 850 (11th Cir. 1990). Where
 10 both statutes have been violated, some Ninth Circuit courts have chosen to award damages pursuant
 11 only to § 605(e)(3)(C)(i)(II). See ***Kingvision Pay-Per-View, Ltd. v. Ortega***, 2002 U.S. Dist. LEXIS
 12 24305, *6 (N.D. Cal. 2002). However, it is not unheard of for courts in this circuit to award damages
 13 pursuant to both statutes. See, ***Spencer Promotions Inc. v. 5th Quarter Enterprises Inc.***, 1996 U.S.
 14 Dist. LEXIS 8686 (N.D. Cal. 1996).

15 Under Title 47 U.S.C. Section 605(e)(3)(c)(II), the amount of statutory damages to which
 16 Plaintiff is entitled for each violation shall be not less than \$1,000.00 and no more than \$10,000.00.

17 To determine appropriate statutory awards, Ninth Circuit courts have considered many
 18 factors, and these factors often overlap with the factors for enhancing damages. See generally
 19 ***Universal Sports Network, Inc. v. Jimenez***, 2002 U.S. Dist. LEXIS 17709 (N.D. Cal. 2002)
 20 (considering intent to realize personal gain, repeat offenses, and the extent of the rebroadcast);
 21 ***Kingvision Pay-Per-View, Ltd. v. Rivers***, 2000 U.S. Dist. LEXIS 4338 (N.D. Cal. 2000) (considering
 22 repeat offenses, and awarding the statutory minimum only where one defendant was already out of
 23 business). Some courts will award the minimum amount automatically if the defendant profited less
 24 than \$1,000.00 from pirating the fight. See ***Entertainment by J&J, Inc. v. Montecinos***, 2002 U.S.
 25 Dist. LEXIS 13633 (N.D. Cal. 2002). However, this reasoning should only be used if the Plaintiff
 26 seeks restitution damages or substitutional relief by invoking Section 605(e)(3)(C)(I) for actual
 27 damages. Other courts will award anywhere from \$2,000.00 to \$10,000.00 as a starting point. See
 28 ***Joe Hand Promotions***,

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1 *Inc. v. Dailey*, 2003 U.S. Dist. LEXIS 4091 (N.D. Cal. 2003); *Spencer Promotions Inc. v. 5th*
 2 *Quarter Enterprises Inc.*, 1996 U.S. Dist. LEXIS 8686 (N.D. Cal. 1996).

3 Yet it is respectfully submitted that *the most* important factor in assessing damages is the
 4 deterrent effect of that the award. See generally *Trademark & Satellite Acts, P.L.-6678*, 1988 U.S.
 5 *Cong. & Admin. News* 7, 5577, 5658. Many courts factor deterrence into their damage enhancement
 6 for Section 605(e)(3)(C)(ii), although it may be more appropriate for the statutory damage calculation
 7 pursuant to Section 605(e)(3)(C)(II). See *Joe Hand Promotions, Inc. v. Pete*, 1999 U.S. Dist. LEXIS
 8 12651 (N.D. Cal. 1999) (awarding \$5,000.00 to deter future transgressions); *Entertainment by J&J,*
 9 *Inc. v. Montecinos*, 2002 U.S. Dist. LEXIS 13633 (N.D. Cal. 2002) (awarding \$5,000.00 to deter
 10 future transgressions).

11 We would like to draw the Court's attention to one case where the enhanced statutory
 12 damages awarded, based solely on the deterrent effect, were more than three times what the
 13 transgressor would have paid to properly commercially license the event. See *Entertainment By*
 14 *J&J, Inc. v. Al-Waha Enterprises, Inc.*, 219 F. Supp. 2d 769, 777 (S.D. Tex. 2002). As noted by the
 15 Court, requiring the Defendant "to pay the price it would have been charged to obtain legal
 16 authorization to display the Event does nothing to accomplish this objective of the statute." *Id.*
 17 Accordingly, it is respectfully submitted an award of the *enhanced* statutory damage *minimum*
 18 (\$10,000.00) is a necessary baseline amount this Court should consider adopting to effectively deter
 19 parties such as the Defendant from stealing proprietary programming. Next, Plaintiff respectfully and
 20 additionally requests enhanced damages pursuant to Sections 553(c)(3)(B) and 605(e)(3)(C)(ii).
 21 Section 605(e)(3)(C)(ii) advises awarding up to \$100,000.00 where "the violation was committed
 22 willfully and for the purposes of direct or indirect commercial advantage or private financial gain . . .
 23 ." In similar circumstances, Section 553(c)(3)(B) will award an aggrieved Plaintiff up to \$50,000.00.
 24 "Willfulness has been defined by the Supreme Court as 'disregard for the governing statute and an
 25 indifference for its requirements.'" *Cablevision Sys. N.Y. City Corp. v. Lokshin*, 980 F. Supp. 107,
 26 114 (E.D.N.Y. 1997) (quoting *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 126 (1985)).
 27 ///
 28 ///

To determine intent for commercial or private gain, 9th Circuit courts often look for evidence of a cover charge, increased price of food/drinks, advertisements, or the number of patrons in attendance. See *Entertainment By J&J, Inc. v. Perez*, 2000 U.S. Dist. LEXIS 17709 (N.D. Cal. 2002); *Kingvision Pay-Per-View, Ltd. v. Arias*, 2000 U.S. Dist. LEXIS 162 (N.D. Cal. 2000). However such requirements are largely illogical and inconsistent with the very nature of the infringing activity. Commercial signal pirates are looking to avoid, not attract, detection for their unlawful acts, and have no financial investment in the programming they are unlawfully exhibiting.

Mindful of this, Courts today are now looking at the act interception and not promotion of the event itself in calculating appropriate damages. For instance in *Al-Waha*, the plaintiff *did not* provide evidence of a cover charge or advertisements of the subject fight. 219 F. Supp. 2d at 776. Nevertheless, the Court rightfully awarded enhanced damages to the aggrieved party plaintiff. *Id.* at 777. “Based on the limited methods of intercepting closed-circuit broadcasting of pay-per-view events and the low probability that a commercial establishment could intercept such a broadcast merely by chance, however, courts have held conduct such as that of [the Defendant] . . . to be willful and for the purposes of direct or indirect commercial advantage or private financial gain.” *Id.* at 776 (citing *Kingvision Pay-Per-View, Ltd. v. Admiral's Anchor, Inc.* No. 2, 172 F. Supp. 2d 810, 812 (S.D.W.Va. 2001); *Time Warner Cable v. Googies Luncheonette, Inc.*, 77 F. Supp. 2d 485, 490; *Time Warner Cable v. Taco Rapido Restaurant*, 988 F. Supp. 107, 111. Enhanced statutory damages should likewise be awarded in the instant action now before this Honorable Court.

CONCLUSION

The unauthorized interception, receipt and broadcast of the *Program* and other closed-circuit programming threatens the economic viability of the promotions industry. There are no countervailing social or policy considerations that justify the unauthorized interception of these broadcasts. See *ON/TV of Chicago v. Julien*, 763 F.2d 839, 843 (7th Cir. 1985); *Subscription Television of Greater Washington v. Kaufman*, 606 F. Supp. 1540, 1544 (D.D.C. 1985).

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1 As a result of theft by the Defendant and others, Plaintiff has lost and will continue to lose its
 2 legitimate commercial customers which are unwilling and financially unable to compete with those
 3 unauthorized locations, such as CLUB 26 MIX, which exhibit sports and other closed-circuit
 4 programming in an unlicensed manner. Because these unauthorized commercial establishments offer
 5 programming to their patrons for no fee (or for a fee which is less than the authorized establishments
 6 charge), the legitimate commercial establishments cannot attract paying customers to offset their
 7 sizeable investments in commercial licensing and event promotion, and as a result, incur
 8 substantial financial loss. Therefore eliminating the prospect that they will continue purchasing
 9 commercial exhibition licenses from the Plaintiff in the future.

10 Theft of closed circuit broadcasts, such as the *Program*, by unauthorized commercial
 11 establishments, such as CLUB 26 MIX, adversely impacts both Plaintiff and its lawful customers.
 12 Plaintiff pays substantial fees to the promoters of the events to obtain the exhibition rights to
 13 sublicense the broadcast of closed circuit programming to authorized commercial establishments.
 14 Plaintiff's *exclusive* source of revenue is the sublicense fees which it charges to authorized
 15 commercial establishments for the right to broadcast closed-circuit boxing and entertainment
 16 programming such as the *Program*. The corrosive effect of commercial signal permanently destroys
 17 of Plaintiff's lawful customer base. See ***Cox Cable Cleveland Area, Inc. v. King***, 582 F. Supp. 379,
 381 (E.D. Ohio 1983).

18 Further, as a direct and proximate result of piracy, Plaintiff suffers severe damage to its
 19 goodwill and professional reputation, and has invariably lost its right and ability to control and
 20 receive fees for transmission of the *Program*. See ***Quincy Cablesystems, Inc.***, 640 F.Supp. at 1161.
 21 When negotiating sublicense fees, Plaintiff represents to commercial establishments that it exercises
 22 supervision over the commercial distribution of its programming. When an unauthorized commercial
 23 establishment intercept, receive, and broadcast closed-circuit programming, such as the *Program*,
 24 Plaintiff's reputation and goodwill suffers irreparable damage with its existing and prospective
 25 commercial customers from what appears to be a misrepresentation of such capabilities on its own
 26 part. Ultimately, piracy simply devalues the product being lawfully developed, marketed, licensed,
 27 or sold to the detriment and injury of all.

28 ///

Clearly, Plaintiff should receive just and substantial compensation from the Defendant for
 these losses suffered. Modest awards of statutory damages cannot meet that test. Damages

1 calculated focused on the ill-gotten gains derived by the pirate as opposed to the injury inflicted will
2 never meet that test.

3 Rather, the sustenance of Plaintiff's small family business concern depends upon the
4 willingness of commercial establishments to pay the Plaintiff sublicense fees for its programming,
5 and the Courts' willingness to deal fairly but ever most firmly with the rising tide of theft of
6 Plaintiff's intellectual property.

7 While it maybe unconventional to award the Plaintiff the quantum of damages it now prays
8 for from a defendant in a default setting, piracy is nothing less than outright theft and a firm judicial
9 hand is required to stop this predatory behavior and compensate the aggrieved accordingly.

10 Respectfully submitted,

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12
13 Dated: April 24, 2008

14 */s/ Thomas P. Riley*
15 **LAW OFFICES OF THOMAS P. RILEY, P.C.**
16 By: Thomas P. Riley
Attorneys for Plaintiff
J & J Sports Productions, Inc.

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26
27 **PROOF OF SERVICE (SERVICE BY MAIL)**

28 I declare that:

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is First Library Square, 1114 Fremont Avenue, South Pasadena, California 91030. I am readily familiar with this law firm's practice for collection and processing of correspondence/documents for mail in the ordinary course of business.

On April 24, 2008, I served:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT BY THE COURT

On all parties referenced by enclosing a true copy thereof in a sealed envelope with postage prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

Cesar Mejia Aguilar (Defendant)
3024 Mission Street
San Francisco, CA 94110

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that this declaration was executed on April 24, 2008, at South Pasadena, California.

Dated: April 24, 2008

/s/ Terry Houston
TERRY HOUSTON

1 **Thomas P. Riley, SBN 194706**
2 **LAW OFFICES OF THOMAS P. RILEY, P.C.**
3 **First Library Square**
4 **1114 Fremont Avenue**
5 **South Pasadena, CA 91030-3227**

6 **Tel: 626-799-9797**
7 **Fax: 626-799-9795**
8 **TPRLAW@att.net**

9 **Attorneys for Plaintiff**
10 **J & J Sports Productions, Inc.**

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **J & J SPORTS PRODUCTIONS, INC.,**

14 **Plaintiff,**

15 **vs.**

16 **CESAR MEJIA AGUILAR, et al.**

17 **Defendant.**

18 **Case No. 3:08-cv-00473-WHA**

19 **DECLARATION OF THOMAS P.**
20 **RILEY IN SUPPORT OF PLAINTIFF'S**
21 **APPLICATION FOR DEFAULT**
22 **JUDGMENT BY THE COURT**
23 **AGAINST CESAR MEJIA AGUILAR,**
24 **INDIVIDUALLY AND D/B/A CLUB 26**
25 **MIX**

26 To: The Clerk of the above-entitled Court:

27 I, Thomas P. Riley, declare as follows:

28 1. My firm and I are counsel to J & J Sports Productions, Inc., in the above-entitled action.

29 2. The Defendant has not appeared in this action and has not responded to the Complaint
30 served upon him within the time permitted by law.

31 3. Defendant is not an infant, incompetent person, or a person in military service or
32 otherwise exempted from default judgment under the Soldiers' and Sailors' Civil Relief Act of 1940.

33 ///

34 4. On April 8, 2008, a Request for Entry of Default was filed with the Court regarding
35 Defendant Cesar Mejia Aguilar, individually and d/b/a Club 26 Mix, the instant Defendant.

36 **DECLARATION OF THOMAS P. RILEY IN SUPPORT OF**
37 **PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT**
38 **BY THE COURT AGAINST DEFENDANT**
39 **CASE NO. 3:08-CV-00473-WHA**
40 **PAGE 1**

5. Default was entered on April 9, 2008, against Defendant Cesar Mejia Aguilar, individually and d/b/a Club 26 Mix.

6. This action involves a claim for damages by Plaintiff J & J Sports Productions, Inc., against Defendant Cesar Mejia Aguilar, individually and d/b/a Club 26 Mix for misappropriation of a Championship Boxing Program in violation of 47 U.S.C. Section 605, *et seq.*, and 47 U.S.C. Section 553, *et seq.* Plaintiff further alleges that the Defendant committed tort of Conversion. Plaintiff seeks relief on its causes of action as set forth below.

7. Plaintiff respectfully requests judgment in its favor and that damages be awarded to it, as follows:

a. Violation of Title 47 U.S.C. 605 (e)(3)(B)(iii) and (c)(ii):	\$	50,000.00
b. Violation Title 47 U.S.C. 553 (b)(2) and (c)(2)(c):	\$	50,000.00
<u>c. Tort of Conversion:</u>	\$	1,600.00
Total Amount of Requested Judgment:	\$	101,600.00

I declare under the penalty of perjury of the laws of the State of California and the United States of America that the above is true and correct.

Respectfully submitted,

Dated: April 24, 2008

/s/ Thomas P. Riley

LAW OFFICES OF THOMAS P. RILEY, P.C.
BY: Thomas P. Riley
Attorneys for Plaintiff
J & J Sports Productions, Inc.

PROOF OF SERVICE (SERVICE BY MAIL)

I declare that:

**DECLARATION OF THOMAS P. RILEY IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT
BY THE COURT AGAINST DEFENDANT
CASE NO. 3:08-CV-00473-WHA
PAGE 2**

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is First Library Square, 1114 Fremont Avenue, South Pasadena, California 91030. I am readily familiar with this law firm's practice for collection and processing of correspondence/documents for mail in the ordinary course of business.

On April 24, 2008, I served:

DECLARATION OF THOMAS P. RILEY IN SUPPORT OF PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT BY THE COURT AGAINST CESAR MEJIA AGUILAR, INDIVIDUALLY AND D/B/A CLUB 26 MIX

On all parties referenced by enclosing a true copy thereof in a sealed envelope with postage prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

Cesar Mejia Aguilar (Defendant)
3024 Mission Street
San Francisco, CA 94110

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that this declaration was executed on April 24, 2008 at South Pasadena, California.

Dated: April 24, 2008

/s/ Terry Houston
TERRY HOUSTON

1 **Thomas P. Riley, SBN 194706**
2 **LAW OFFICES OF THOMAS P. RILEY, P.C.**
3 **First Library Square**
4 **1114 Fremont Avenue**
5 **South Pasadena, CA 91030-3227**

6 **Tel: 626-799-9797**
7 **Fax: 626-799-9795**
8 **TPRLAW@att.net**

9
10 **Attorneys for Plaintiff**
11 **J & J Sports Productions, Inc.**

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **J & J SPORTS PRODUCTIONS, INC,**

16 **CASE NO. 3:08-cv-00473-WHA**

17 **Plaintiff,**

18 **DECLARATION OF AFFIANT**

19 **vs.**

20 **CESAR MEJIA AGUILAR, et al.**

21 **Defendant.**

22
23 **TO THE CLERK OF THE COURT:**

24
25 A true and correct copy of the Declaration of Affiant is attached hereto and made part hereof.

26
27 Respectfully submitted:

28 Date: April 24, 2008

29 */s/ Thomas P. Riley*

30 **LAW OFFICES OF THOMAS P. RILEY, P.C.**
31 By: Thomas P. Riley
32 Attorneys for Plaintiff
33 J & J Sports Productions, Inc.

State of California

County of San Francisco

AFFIDAVIT

I, the undersigned, being duly sworn according to law depose and say that on Saturday, January 21, 2006 at approximately 7:30 p.m., I entered the Club 26 located at 3024 Mission Street, San Francisco, California.

As I entered the establishment, three (3) Hispanic male security guards were standing at the outside entrance checking for identifications of patrons entering the establishment and I observed one (1) black security guard inside the establishment. There was no cover charge to get in. Upon entering Club 26 I walked in a westerly direction into the establishment where approximately three (3) feet inside the door was a dark colored heavy curtain that separated the outside from the inside patron area.

As I entered the main bar area I notice that the Television located on the up on the wall was playing the HPO PPV fights that were scheduled for that evening. I then proceeded to the northern side of the establishment and sat down, where then a Hispanic female approached me and asked me what I wanted.

I ordered an O'Doul's non-alcoholic beverage, and upon the server returning she stated that the drink was \$4.00 a piece. I asked the server for a receipt, however she didn't speak english that well and didn't understand the word receipt. There was a Hispanic male at the table to my left that stated that she would get one (1) for me if I wanted one, but never received one.

The Hispanic male individual stated some to the server in Spanish but I was not able to understand what they were saying due to the language barrier. I notice that she was

approximately in her early twenties, approximately 5'10, weighing about 120 lbs., black long hair with a spiral perm in it, wearing a black Latino style blouse with a large ruffle collar and white denim style pants. I was unable to get her name due to the language barrier. The Hispanic male moved about the bar area and I felt that he was in charge of the facility due to him giving orders to the servers and the three (3) bar Hispanic barmaids behind the bar located on the south side of the establishment. He did though speak very good English and understood what I was asking for. He was approximately in his late thirties (30's) to early forties (40's). He was wearing a dark colored shirt and denim style pants with a white sport coat.

The Establishment was split into three (3) different areas, one (1) being the bar area that was located on the south side of the establishment with approximately 20 seats at the bar and approximately eight 8 stools at a very large round elevated table. The area that I was seated in was on the north side of the establishment approximately fifteen (15) feet from the bar with eight (8) tables with four chairs at each of the table. The third area was located on the west side of the establishment, where a pool table was located and patrons watching the fights on a twenty one (21) inch black in color television mounted up on the wall in the south west corner.

There were approximately four (4) televisions on with the fights playing on all four. There was a nineteen-(19) inch television on the east side end of the bar mounted up on the wall by the window that faced Mission Street, black in color. There were two nineteen (19) inch black in color televisions in the area I was sitting, mounted up on the wall that separated the area where I was seated and the rest of the establishment.

There were a total of 3 female bartenders that were serving patrons at the bar area and two (2) servers in the patron area.

When I was seated it was in the first of twelve rounds with two minutes left in the round of the Castillo vs Munoz fight. At that time I observed Munoz in all red trunks and Castillo wearing red trunks with two (2) white stripes down the side, and Munoz knocked Castillo down and there was a standing eight count. I continued to watch the fight with other patrons of the establishment. I watched the remainder of the fight sitting at my table in the same place the entire time.

Throughout the establishment, there was no memorabilia, signs, or posters advertising the fight for that evening. The establishment was an up scale bar and that had two (2) windows facing east onto Mission Street. The capacity of the establishment was approximately 150 people. As I sat watching the fight, I counted the number of patrons three (3) times, the head counts being 50, 59, and 70.

As I left the establishment at approximately 7:45 p.m. I attempted to obtain vehicle license plate numbers on vehicles parked out side that could be tied to the bar, However I was unable to due to the fact that there was no parking lot that could be tied to the establishment and the parking was curbside. In front of the entire establishment was a bus zone, therefore all the patrons either walked there or parked at some distance away.

Date: 2-2-06



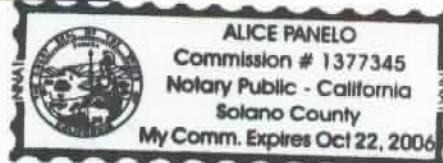
Charles E. Rafferty, PI #22025
Rafferty Investigations
(707) 429-8076

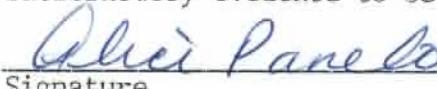
Dated February 2, 2006

State of California

County of Solano

Subscribed and sworn to (or affirmed) before on this 2nd day of February, 2006, by Charles E. Rafferty, Private Investigator, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appear before me.




Signature



PROOF OF SERVICE (SERVICE BY MAIL)

I declare that:

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is First Library Square, 1114 Fremont Avenue, South Pasadena, California 91030. I am readily familiar with this law firm's practice for collection and processing of correspondence/documents for mail in the ordinary course of business.

On April 24, 2008, I served:

DECLARATION OF AFFIANT

On all parties referenced by enclosing true copies thereof in a sealed envelope with postage prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

Cesar Mejia Aguilar (Defendant)
3024 Mission Street
San Francisco, CA 94110

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that this declaration was executed on April 24, 2008, at South Pasadena, California.

Dated: April 24, 2008

/s/ Terry Houston

TERRY HOUSTON

**1 Thomas P. Riley, SBN 194706
2 LAW OFFICES OF THOMAS P. RILEY, P.C.
3 First Library Square
1114 Fremont Avenue
South Pasadena, CA 91030-3227**

**4 Tel: 626-799-9797
5 Fax: 626-799-9795
TPRLAW@att.net**

**6 Attorneys for Plaintiff
J & J Sports Productions, Inc.**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

J & J SPORTS PRODUCTIONS, INC.

Case No. 3:08-cv-00473-WHA

Plaintiff.

ORDER (Proposed)

vs.

4 CESAR MEJIA AGUILAR, et al.,

Defendant.

7 Default having been entered in this action on April 9, 2008 against Cesar Mejia Aguilar, and the
8 application for and declarations in support of default judgment having been filed on or about April 24,
9 2008, and having been served on the Defendant and notice given and no appearance by the Defendant
10 having been made in person or in writing and all other requirements for entry of default judgment
11 pursuant to Federal Rule Civil Procedure 55 having been certified to by Plaintiff's counsel, now
12 therefore,

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ORDER (Proposed)
CASE NO. 3:08-CV-00473-WHA
PAGE 1

IT IS HEREBY ORDERED AND ADJUDGED that JUDGMENT be entered against Defendant Cesar Mejia Aguilar individually and d/b/a Club 26 Mix and in favor of J & J Sports Productions, Inc., as follows:

- | | | |
|----|--|--------------------|
| a. | For the Violation of Title 47 U.S.C. 605 (e)(3)(B)(iii) and (c)(ii): | \$ 50,000.00 |
| b. | For the Violation of Title 47 U.S.C. 553 (b)(2) and (c)(2)(c): | \$ 50,000.00 |
| c. | <u>For the Tort of Conversion:</u> | <u>\$ 1,600.00</u> |
| | Total: | \$ 101,600.00 |

Total: \$ 101,600.00

**Accordingly, JUDGMENT IS ENTERED IN ACCORDANCE WITH THE
FOREGOING IN THE SUM OF \$101,600.00.**

IT'S SO ORDERED.

Dated:

**The Honorable William H. Alsup
United States District Court
Northern District of California**

///

PROOF OF SERVICE (SERVICE BY MAIL)

I declare that:

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is First Library Square, 1114 Fremont Avenue, South Pasadena, California 91030. I am readily familiar with this law firm's practice for collection and processing of correspondence/documents for mail in the ordinary course of business.

On April 24, 2008, I served:

ORDER (PROPOSED)

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3024 Mission Street
San Francisco, CA 94110

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that this declaration was executed on April 24, 2008, at South Pasadena, California.

Dated: April 24, 2008

/s/ Terry Houston
TERRY HOUSTON